



Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 922

Case No. 1016: DARWICH

Against: The Commissioner-General
of the United Nations
Relief and Works Agency
for Palestine Refugees
in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Victor Yenyi Olungu; Ms. Marsha Echols;

Whereas at the request of Mahmoud Darwish, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, extended until 30 April 1998 the time-limit for the filing of an application to the Tribunal;

Whereas, on 27 March 1998, the Applicant filed an application requesting the Tribunal:

- i. [T]hat he is reinstated to duty without any further delay.
- ii. [T]hat period of cessation is considered as special leave with full pay.
- iii. [T]hat he is compensated for excessive delay in processing his appeal for over 32 months.

iv. [T]hat secretarial and legal counseling fees estimated at 400 are paid."

Whereas the Respondent filed his answer on 13 September 1998;

Whereas the Applicant filed written observations on 10 December 1998;

Whereas the Respondent submitted an additional document on 28 January 1999,
asking for clarification of the Applicant's written observations;

Whereas the Applicant submitted additional comments on 20 March and on 7 April
1999;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 16 November 1986, on an Area
staff temporary indefinite appointment, as a Doorkeeper/Cleaner at Yarmouk Health Centre,
Damascus, Syrian Arab Republic (SAR).

On 12 January 1994, the Officer-in-Charge, Health Department, SAR, sent the
Applicant a letter of warning for failing to wear his uniform during duty hours, despite the
fact that his attention had been drawn to this failure on several previous occasions.

In April 1994, the Field Nursing Officer, SAR, reported to the Chief, Field Health
Programme, that the Applicant had contravened Nursing Procedures and Technical
Instructions and had verbally abused her when she reported this to the Medical Officer and to
the Senior Staff Nurse. On 1 May 1994, the Field Administration Officer, SAR, sent the
Applicant a letter of written censure for meddling in the official affairs of the Senior Staff
nurse at his duty station and behaving towards the Field Nursing Officer in a loud and
confrontational manner.

Effective 1 September 1994, 35 manual workers, including the Applicant, were
transferred to new duty stations. The Applicant was transferred from his then post as
Doorkeeper/Cleaner at UNRWA's Polyclinic, Damascus, to school attendant at Nqib Al
Arabieh School, Damascus.

On 11 October 1994, the Applicant submitted a letter of resignation to the Area Education Officer, effective 23 October 1994, citing personal reasons.

On 12 October 1994, the Area Officer, Damascus, forwarded the letter of resignation to the Field Personnel Officer, SAR, recommending that resignation be granted.

On 17 October 1994, the Field Personnel Officer, SAR, wrote to the Applicant and acknowledged receipt of his resignation. He further advised that approval had been given to the Applicant's request that his resignation be "effective close of business on 22 October 1999".

The Applicant's resignation from the Agency's service was processed effective at the close of business on 23 October 1994.

On 25 October 1994, a letter from the Applicant, addressed to the Field Administration Officer, was received in the Mail Office and allocated Nr. 218. In it, the Applicant referred to his notice of resignation dated 22 October 1994 (sic) and requested that he be permitted to withdraw his resignation and reinstated in his work. On 6 November 1994, the Field Administration Officer responded to the Applicant and noted that his resignation had already been approved to take effect from 23 October 1994. Considering the Applicant's record of service, he was not inclined to accede to the Applicant's request.

On 17 November 1994, the Applicant wrote to the Director of UNRWA Affairs, SAR, stating that on 17 October 1994, "while the Area Education Officer ... was visiting the school, I asked him that my resignation is to be withdrawn in front [sic] of the Head Teacher ... He said it was alright with him and that I would consider the resignation as withdrawn."¹ He requested him to reconsider the administrative decision not to reinstate him or to allow him to withdraw his resignation. On 1 December 1994, the Field Administration Officer responded to the Applicant. He advised that there was no Agency interest in reinstating the

¹ In a statement dated 10 April 1995, the Area Education Officer noted, *inter alia*, that he had mentioned to the Applicant that "the approval on his request (for withdrawal of resignation) [was] not within [his] jurisdiction, as the authority for such a matter [was] vested in the Field Administration Officer".

Applicant in the light of the letter of reprimand and the letter of censure that had recently been addressed to him.

On 9 January 1995, the Applicant wrote to the Secretary of the Area Staff Joint Appeals Board (JAB) to submit his appeal. The Secretary acknowledged receipt of the appeal on 27 January 1995. The Administration's reply thereto was filed on 25 May 1995. Further submissions were made by the Applicant dated 4 September 1995.

The JAB adopted its report on 18 March 1997. Its evaluation, judgement and recommendation read as follows:

"III. EVALUATION AND JUDGEMENT

19. In its deliberations the Board examined all documents cited before it, including the Appellant's personal file and came out with the following:

(a) By reference to the appeal, the Board noted that the Appellant's contention that the Administration's decision of non-reinstatement was based on prejudice and biased consideration of the facts.

(b) By reference to the Administration's reply the Board noted that the Administration's contention was that (1) its decision was properly exercised based on valid managerial considerations, without any personal prejudice or bias against him, and, (2) that there has been no non-observance of Rules and Regulations including the Appellant's terms of appointment.

(c) By reference to the Appellant's personal file the Board noted that the Appellant received a warning for failing to wear his uniform during duty hours which in the opinion of the Board should not be considered damaging to the Appellant's reputation.

(d) The Board noted that when the Field Nursing Officer reported that the Appellant had contravened Nursing procedures and technical instruction, and had abused her when she reported this to the Medical Officer and the Senior staff, the Appellant received a letter of censure. Moreover, the Board took note of the incident of transferring the Appellant to the position of school attendant without documenting the transfer in his personal file, without giving the Appellant prior notice or consulting with him, and the only documentation of the transfer is the PAF issued upon his resignation.

The Board established that the above-mentioned disciplinary measures taken against the Appellant were taken for an act which does not deserve such measures.

In this contest, the Board believes that the Appellant was pushed to resign due to the unjustified transfer, the Board also believes that the Administration acted with prejudice and bias against the Appellant by not accepting the withdrawal of his resignation.

IV. RECOMMENDATION

20. In view of the foregoing, and without prejudice to any further oral or written submission to any party, the Board unanimously makes its recommendation that the administrative decision appealed against be reviewed with a view of re-employing the Appellant."

On 17 August 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board was of the opinion that you were 'pushed' to resign because you had received a warning for failing to wear your uniform, received a written censure for, inter alia, abusing a superior, and because you had been transferred against your will to another post at a different location. The Board also was of the opinion that the Administration acted with prejudice and bias by not accepting the withdrawal of your resignation. Accordingly, it recommended that the decision not to re-employ you be reviewed with a view to your re-employment.

The Board's reasoning appears to be somewhat confused. It was your case that you resigned because of emotional pressure resulting from your marriage and your mother's sickness. Having resigned, the issue for the Board was whether the discretion whether or not to re-employ you was exercised contrary to the Rules or exercised in an inappropriate manner. I understand the Board to suggest that the warning, censure and transfer indicate prejudice against you and by parity of reasoning, this prejudice affected the decision not to re-employ you. I cannot accept this conclusion which is based on administrative and disciplinary measures which were not challenged by you at that time. The administrative and disciplinary measures which were not challenged by you at that time. The Agency has consistently applied the policy, set out in personnel directive A/4, of not re-employing staff members who have resigned unless there is a clear element of Agency interest in doing so. There are sound reasons for that policy and in the

absence of proven bias or prejudice and there being no clear Agency interest in re-employing you, I cannot accept the Board's conclusions and recommendation. Your appeal is therefore dismissed.

..."

On 27 March 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant withdrew his resignation before it had been accepted by the Respondent.
2. The Applicant was "pushed" to resign as a result of his transfer to a new duty station.
3. The Respondent's decision not to accept the withdrawal of the Applicant's resignation was tainted by prejudice and bias.

Whereas the Respondent's principal contentions are:

1. Acceptance is not required for a notice of resignation to bring about the separation of a staff member, only its receipt by the Respondent. The resignation takes effect at the conclusion of the stipulated or agreed notice period.
2. The Respondent's decision not to re-employ the Applicant after his resignation was not tainted by prejudice or improper motive.

The Tribunal, having deliberated from 15 to 29 July 1999, now pronounces the following judgement:

I. The application raises two legal issues, which the Tribunal will address one after the other. First, was the Applicant's resignation in fact valid under the UNRWA Staff Regulations? Second, was the refusal of UNRWA to reinstate the Applicant legitimate and in accordance with the relevant rules?

II. The Applicant entered the service of UNRWA in 1986 as a doorkeeper/cleaner at a medical centre in the Syrian Arab Republic (Yarmouk Health Centre). His work elicited no criticism until 1994, and then in April of that year he received a warning for failing to wear his uniform during duty hours. At the beginning of May, he was sent a letter of censure, as a form of disciplinary measure, concerning an incident in which he meddled in the care being dispensed by the Senior Staff Nurse and behaved towards the Field Nursing Officer in a confrontational manner. On 1 September 1994, the Applicant was transferred, together with other manual workers employed by UNRWA, to a school in the Damascus area. The Applicant did not contest the measures taken with reference to him, not even the letter of censure from which he might have invoked the appeals process. On the contrary, on 11 October 1994 he tendered his resignation in a letter to the Area Education Officer, citing "personal reasons" and giving 23 October as the effective date of his resignation (i.e., the date on which his UNRWA service would cease). On 17 October, the Field Personnel Officer wrote to the Applicant, formally acknowledging his resignation. There is therefore no doubt as to the validity of the Applicant's written resignation dated 11 October or of the written acceptance dated 17 October 1994.

III. This straightforward conclusion has been contested, however, by the Applicant on grounds in which the Tribunal does not concur. He maintains that he resigned because he was "pushed" to do so by UNRWA and that his resignation was withdrawn before being accepted and could therefore be considered null and void.

IV. On the first point, the contention of the Applicant that the measures taken against him before he sent his letter of resignation altered the voluntary character of the resignation is in itself unconvincing, especially as the Applicant did not contest those measures. Moreover, it is contradicted by the explanations provided by the Applicant himself in various letters addressed to the UNRWA Administration which, to justify his resignation, cite "personal reasons" and "house, social and financial problems" and the fact that he is "under emotional stress, being newly married, and with a mother seriously sick". The Tribunal cannot therefore accept the argument that the Applicant was "pushed to resign".

V. Nor is the validity of the Applicant's resignation affected by the contention that it was withdrawn before being accepted. The Applicant maintains that he informed the Area Education Officer, who was visiting the school on 17 October 1994 (the date on which the letter of resignation was accepted), of his intention to withdraw his resignation. The Area Education Officer is alleged to have explained before witnesses that the withdrawal was approved. However, these allegations are in complete contradiction with the written testimony of the Area Education Officer, who states that he merely indicated to the Applicant that the withdrawal of the resignation would have to be sent in writing through the normal channels and that he would submit it to the competent authority (Field Administration Officer). It therefore appears that the Applicant failed to follow in timely fashion the procedure that he could have embarked on to withdraw his resignation.

VI. By deciding not to reinstate the Applicant, did UNRWA violate his rights? The answer to this question is obviously in the negative. Since it has been by no means demonstrated that the measures taken against the Applicant in 1994 were of a discriminatory nature, thereby vitiating in advance the refusal to reinstate him after he had resigned, it is clear that the fact that the conduct of the Applicant gave rise to a warning and a letter of censure was calculated to discourage the Administration from re-employing him. The refusal to reinstate the Applicant was, moreover, in conformity with the provisions of personnel

directive A/4/Rev.5 of 1 January 1996, paragraph 3.2, which explicitly states: "The reappointment of former staff who have resigned should, therefore, be carefully considered and should not normally be approved unless there is a clear element of Agency interest in obtaining the former staff member's services again". In the Agency's opinion, such was not the case. The Tribunal therefore considers that the decision not to reinstate the Applicant after the submission of a valid resignation did not violate his rights.

VII. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Hubert THIERRY
Président

Victor YENYI OLUNGU
Membre

Marsha ECHOLS
Membre

Genève, le 29 juillet 1999

Maritza STRUYVENBERG
Secrétaire